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AUG 12 2005

In re Application of:	:	
Haruki Toda et al.	:	
Serial No.: 10/688,881	:	DECISION ON PETITION TO
Filed: October 21, 2003	:	WITHDRAW THE HOLDING
Attorney Docket No.: 016907-1576	:	OF ABANDONMENT

This is a decision on the petition to withdraw the holding of abandonment filed on April 12, 2005 under 37 C.F.R. § 1.181(a). There is no fee for this petition.

The petition is **GRANTED**.

The application was held abandoned for failure to file a proper reply to the Office action (a restriction) mailed on August 4, 2004. A Notice of Abandonment was mailed on April 6, 2005.

Petitioner asserts that a response to the Office action of August 4, 2004 was timely filed in the United States Patent and Trademark Office (USPTO). To support this assertion, petitioner has submitted a copy of the response (an election) and a copy of a stamped return postcard which properly identifies and acknowledges receipt of the response by the USPTO on September 7, 2004. September 4, 2004 was a Saturday and September 6, 2004 was a Federal holiday so a response filed on September 7, 2004 would have been timely under the provisions of 37 C.F.R. § 1.7 had it been received.

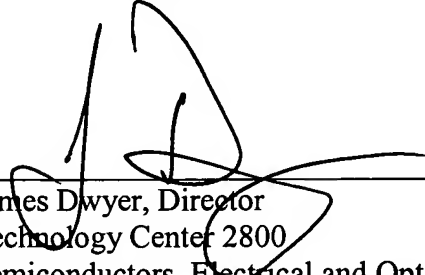
A review of the application file record reveals that the above-identified response having been acknowledged as being received in the USPTO on September 7, 2004 is not of record in the application file and cannot be located. However, M.P.E.P. § 503 states that a postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. Accordingly, it is concluded that the response was timely received but lost after receipt thereof.

For the above stated reason, the petition is granted. The Notice of Abandonment mailed April 6, 2004 is hereby **VACATED** and the holding of abandonment is withdrawn.

The copy of the response submitted with the petition on April 12, 2005 is accepted since the response originally submitted was apparently lost.

The response will be processed by the Technology Center 2800 support staff and the examiner will prepare an Office action based upon the response.

Any inquiries regarding this decision should be directed to Edward Westin at (571) 272-1638.



James Dwyer, Director
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